

# MANAGER'S INFORMATION REPORT

OFFICE OF THE COUNTY MANAGER  
CLARK COUNTY, NEVADA

**MIR No.:** 5390

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Date: 08/23/07

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Issue: **CORONER'S INQUEST PROCESS**

## **Subject/Issue Statement:**

Staff was directed to examine the King County Coroner's Inquest process and report back to the Board. This report summarizes the process observed in Seattle, as well as the feedback, input and recommendations received by the Clark County Coroner's Inquest Committee.

## **Summary:**

Due to an increase in the number of police officer involved shootings, the Board of County Commissioners at its August 1, 2006, meeting directed County staff to meet with community stakeholders and hold public input sessions in order to gather information and review possible changes to the current coroner's inquest process. The group of stakeholders has been meeting since August 2006, and has held two public input sessions.

At the March 20, 2007 meeting, the Board directed staff to examine the King County Coroner's Inquest process and work with the Coroner's Inquest Committee to determine if any of the King County procedural and administrative methodology could be adopted in Clark County to improve our current inquest process. County management, a Police Protective Association representative and in-house counsel for the Las Vegas Metropolitan Police Department traveled to Seattle to observe a coroner's inquest. Their observations were presented to the committee and discussed.

It is important to note that most coroner's inquest processes are very controversial in nature. In any jurisdiction that has an open, public, inquest process, there is much debate regarding the process for the proceedings. While some view Clark County's process as flawed, other jurisdictions have traveled to Clark County and praised the open process.

## **King County Coroner's Inquest process:**

King County uses the equivalent of justices of the peace to conduct coroner's inquests. Instead of rotating the process among all justices of the peace, inquests are conducted by 2 – 3 experienced jurists. Limiting the jurists that conduct the inquests helps to provide consistency in the process. The judge acts as the coroner and directs the proceedings, with the assistance of

the district attorney. The district attorney merely presents the evidence. The district attorney does not act as an advocate on behalf of any of the parties. In fact, the district attorney has circulated a memo reminding prosecutors that when they are conducting an inquest, they are not acting as advocates. The judge decides which witnesses should be called and what evidence is relevant. Unlike Clark County, the police officer is allowed to sit at counsel table with his attorney. Additionally, the county has an attorney sitting at counsel table. This individual is responsible for protecting the county from civil liability. Finally, the decedent's family also has an attorney at counsel table. The decedent's family must retain counsel at their own expense. There is case law in Washington that precludes the decedent's family from having an attorney at public expense.

The judge conducts a pretrial hearing with all of the parties. Rulings are made regarding the witnesses and admissibility of evidence. All of the parties are provided with the reports and applicable discovery that will be used in the proceedings.

After the district attorney presents the evidence, each party is allowed to cross-examine the witnesses. Prior to the inquest that county staff observed, the decedent's family had told the press that they were going to pursue a civil lawsuit against the police department. During the inquest, the decedent's attorney attempted to question the witnesses on matters that were not relevant to the inquest. The judge did an excellent job of maintaining control of the proceedings and of limiting the testimony to matters relevant to the inquest.

It is important to note that the Coroner's Inquest Review Committee has always agreed that cross-examination is not a viable option for Clark County.

#### **Current Process in Clark County:**

A coroner's inquest is a non-adversarial hearing to determine whether a death is justified, negligent or criminal. A hearing master presides over the hearing and makes rulings on the evidence and on what questions may be asked. A hearing master is selected from a group of licensed attorneys that have been pre-approved by the Clark County Commission. With the exception of one rural justice of the peace, the hearing masters are not elected judges.

A jury is selected through the normal jury selection process. Once seated, a jury hears evidence that is presented by a deputy district attorney. The district attorney presents evidence and asks oral questions of the witness in front of the jury. He will call the witnesses and ask them what happened. There is no cross-examination on behalf of the decedent's family. After the district attorney finishes questioning the witness, jurors are permitted to ask questions. The hearing master decides if the juror's question may be answered by the witness.

Clark County Code 2.12.080 defines "interested parties" as an attorney licensed in the State of Nevada and/or immediate family members of the deceased. Often, the family has an attorney present at the proceedings. This attorney is often seeking evidence to decide whether or not a civil lawsuit against LVMPD is warranted. During the public forums, a civil attorney who often represents the decedent's family claimed that the family is merely seeking answers to what

happened. Since no discovery or reports are provided to the family, the family has many questions regarding what happened. This individual claimed that families are forced to file a lawsuit because no information is provided and because the coroner's inquest process does not provide sufficient information to the family regarding what transpired.

If an interested party has questions, he/she must submit them in writing to the hearing master. A lawyer representing the officer may also submit written questions. The hearing master reads the questions silently and determines whether to ask the question. The written questions are made a part of the record, however, the questions are not read aloud during the proceedings unless the hearing master decides to ask the interested parties' question. After hearing all of the evidence, the jury retires to deliberate and make a finding. If the jury finds that the officer's conduct was criminal, the district attorney has the option of pursuing criminal charges against the officer. If the jury returns a finding of justified or excusable, the process is over. The jury's decision is not binding on the district attorney. The district attorney always has the option of prosecuting an officer if he believes that the officer acted in a criminal fashion.

#### **NEW RECOMMENDATIONS:**

Since the inception of this review, new officials have been elected to the positions of Sheriff and Attorney General. Therefore, some of the proposals originally presented to the Board of County Commissioners have been modified.

#### **1. BROADEN DEFINITION OF INTERESTED PARTIES**

The committee is recommending that the definition of "interested parties" be broadened. The ordinance currently allows immediate family members to ask questions. It excludes grandparents, who are often raising their grandchildren, and cohabitating significant others.

The committee recommends broadening the definition of "interested parties" to allow a judge to determine whether someone is an "interested party".

#### **2. REPLACE HEARING MASTERS WITH JUSTICES OF THE PEACE**

There has been some concern that hearing masters are not accountable to the public because they are not elected officials. The coroner's inquest review committee is recommending that the hearing masters be eliminated. They are recommending that a justice of the peace who is a licensed attorney preside over the proceedings. The rationale for this recommendation is that as elected officials, the justices of the peace are accountable to the public. They are also accustomed to presiding over legal proceedings and can maintain control of the proceedings.

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would also be afforded the opportunity to ask questions in the same manner as the family. Some believe that licensed attorneys will not ask inappropriate questions because the court has the power to sanction them. Also, the attorneys will not be as emotional as the affected families.

In the event that the family does not have an attorney, the public defender's office has agreed to be appointed for the limited basis of assisting the family during the inquest process. This would provide indigent families with much needed legal assistance during the process. The public defender cannot represent the family in civil lawsuits against LVMPD. However, some on the committee object to having the taxpayers pay for the families' attorney.

In the event that a family chooses to not have an attorney, questions would be directed to the justice of the peace outside the presence of the jury. The judge would determine whether the question could be asked of the witness. Screening the questions in this manner would ensure that the jury would not be tainted by inappropriate questions or emotional outbursts.

The foregoing are the primary recommendations from the committee. Staff is making one last attempt on reaching a compromise on the questioning by interested parties.



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